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RUEHLO/AMEMBASSY LONDON 0534
RUEHDO/AMEMBASSY DOHA 0471
RUEHMD/AMEMBASSY MADRID 2076
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RUEHPG/AMEMBASSY PRAGUE 0106
RUEHBS/USEU BRUSSELS
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C O N F I D E N T I A L SECTION 01 OF 02 NOUAKCHOTT 000222

SIPDIS

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SUBJECT: DADDAH MAKES LEGAL CASE FOR JUNTA MEMBERS'
INELIGIBILITY IN UPCOMING PRESIDENTIAL ELECTIONS

Classified By: Charge d'Affaires Dennis Hankins for reasons 1.4 (b) and (d).

11. (U) This is an action request. Please see paragraph 7.

12. (C) Charge received a letter March 25 from RFD President Ahmed Ould Daddah. The letter outlines the RFD's argument (which was also made publicly in the press) that members of the military junta (High State Council) cannot legally stand as candidates in the upcoming June 6 presidential election. (Note: Previously, the HSC has argued that as long as members of the military resign before the day of the election, they can stand as candidates and be in conformance with Mauritanian law. Hence the plan for junta leader General Aziz to resign 45 days before the election, become a "civilian," and run for president. End note.)

13. (SBU) Daddah's case for junta members' ineligibility in the June 6 presidential election rests on the following points:

-- Article 80 of the Mauritanian constitution states:

"Treaties and accords duly approved shall, upon their publication, be superior to laws."

-- Both chambers of the Mauritanian parliament ratified and published the African Charter for Democracy, Elections, and Governance on April 29, 2008. (Note: This was three months before the coup. End note.) Article 25, line 4 of this treaty states that "the authors of an anti-constitutional change in government cannot participate in elections organized to restore democratic order, nor can they occupy posts of responsibility in their country."

-- Therefore, the Mauritanian government has the legal requirement to respect the treaty, according to the constitution and international law. Because the members of the High State Council perpetrated an "anti-constitutional change in government," they cannot run as candidates in the election.

14. (SBU) The proposal anticipates the potential counterargument that 15 signatories are needed to bring the treaty into effect. (Note: Only two countries, Mauritania and Ethiopia, have ratified the African Charter for Democracy, Elections, and Governance thus far. Therefore, it could be argued that the treaty is not binding, as it needs 15 ratifications to come into force. End note). The RFD attempts to rebut this argument by citing the 1969 Vienna

Convention on treaties, article 16, line b, which states:
"Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon their deposit with the depositary." Note: Curiously, the RFD does not cite article 18, which specifies states' obligations "not to defeat the object and purpose of a treaty prior to its entry into force." Article 18 could potentially strengthen their legal argument that the Charter is currently binding. End note.

¶5. (SBU) The proposal also selectively quotes Article 80 of the Mauritanian constitution. The full text of the article states: "Treaties and accords duly ratified or approved shall, upon their publication, be superior to laws, subject to, for each accord or treaty, its implementation by the other party." The latter part of Article 80 seems to imply that the treaty must be in force by the other party (the African Union, in this case) for it to be superior to laws. This would undermine Daddah's legal argument. The French Charge told Charge March 24 that their understanding is that Mauritania is not subject to the Charter since it is not yet in force.

¶6. (C) Comment: Daddah continues to try to find ways to exclude the military from running in the presidential elections (conveniently leaving himself as the most viable candidate remaining). It is unclear whether or not his legal reasoning is sound. If so, it is another argument that internal anti-coup forces and the international community can

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use to discredit Aziz's planned elections. However, the real practical effect of such technical legal arguments would be small; no one expects Aziz to suddenly discover a new-found respect for international law and step aside. End comment.

¶7. (C) Comment - continued: In a March 25 meeting with the FNDD's diplomatic head, Mohamed Ould Maouloud, Charge was told the FNDD finds Daddah's argument useful in causing embarrassment and complication for the regime, but overall sees this as just a minor diversion from their overall strategy. Since the FNDD rejects the military's program of anticipated elections under anyone but Abdallahi, the issue of whether former military can run in those elections or not is mute. Charge noted that our initial reading is that the argument that Mauritania is bound by treaty to prohibit coup leaders from running in elections is, at best, arguable. Charge suggested it better to focus on the points that Mauritania had taken the lead in Africa to take a hard line against coups and that both houses of parliament had ratified a decision to preclude the military from running. Charge said we would seek a legal assessment of whether Mauritania had a treaty obligation or not and that we would share the assessment with the FNDD if it strengthened their case (otherwise we would keep mum).

¶8. (SBU) ACTION REQUEST: Post requests guidance on whether Daddah's legal argument is sound. Post would be particularly grateful for legal guidance as to whether or not Mauritania, as a signatory to the African Charter for Democracy, Elections, and Governance, is legally bound to respect the charter, given that it has not officially come into effect.
HANKINS